

Residential Tenancies Tribunal

Application 2024-1124-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 22-January-2025 at 2:00 pm.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, was represented at the hearing by [REDACTED] and [REDACTED], who attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach them by telephone at the start of the hearing. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as they have been properly served. The landlord submitted an affidavit (LL#1 and LL#2) with their application stating that they had served the tenant with notice of the hearing by prepaid registered mail on 19-December-2024 at 1:09 pm. The appropriate supporting documents were also provided (LL#3). Checking the tracking number [REDACTED] shows that the package was successfully delivered. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issues before the Tribunal

5. Should the landlords' application for an order of vacant possession succeed?

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the Act).

7. Also considered and referred to in this decision are sections 19(1), 19(4), and 34 of the Act, as follows:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

(a) where the residential premises is rented from week to week and the amount of rent payable by a tenant is overdue for 3 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 3 days after the notice is served on the tenant; and

(b) where the residential premises is

- (i) rented from month to month,
- (ii) rented for a fixed term, or
- (iii) a site for a mobile home, and

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

...

(4) In addition to the requirements under section 34, a notice under this section shall

- (a) be signed by the landlord;
- (b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and
- (c) be served in accordance with section 35.

Requirements for notices

34. A notice under this Act shall

- (a) be in writing in the form prescribed by the minister;
- (b) contain the name and address of the recipient;
- (c) identify the residential premises for which the notice is given; and
- (d) state the section of this Act under which the notice is given.

Issue 1: Vacant Possession

8. In order to receive an order for vacant possession, a landlord must have issued a valid termination notice. To be valid, a termination notice must comply with all relevant sections of the Act.
9. The landlord submitted a copy of a termination notice (LL#4). LL#4 is in writing in the form prescribed by the minister. It contains the name and address of the recipient. It identifies the residential premises it regards. It identifies itself as being issued under s. 19 of the Act. It therefore complies with s. 34.
10. The notice was signed by an agent of the landlord. It specifies the date on which the tenancy is to terminate and the tenant is to vacate the premises. The landlord testified that it was served on the tenant by attaching it to the tenant's front door in accordance with s. 35(2)(c). It therefore complies with s. 19(4) of the Act.
11. The notice was issued on 19-November-2024. At this point, according to the uncontradicted testimony of the representatives of the landlord, the rent had been overdue for more than 5 days. They testified that the rent had not had a balance of 0 or fewer dollars owing since 2020. LL#4 gives a move out date of 2-December-2024, which is not less than 10 days after it was served. It therefore complies with s. 19(1)(b) of the Act.
12. LL#4 complies with all relevant sections of the Act and is therefore valid.

Decision

13. The valid termination notice gave a move out date of 2-December-2024. The tenancy agreement ended on that date. Insofar as the tenants still occupy the premises, they do so illegally. The landlord's application for an order of vacant possession succeeds.

Summary of Decision

14. The tenant shall vacate the premises immediately.
15. The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sheriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession.

6-February-2025

Date


Seren Cahill
Residential Tenancies Office